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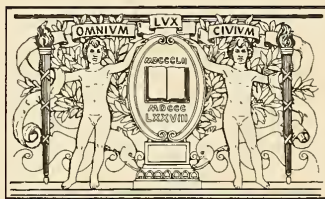
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June 24, 1976

FINANCE COMMISSION REPORT ON CERTAIN ASPECTS OF THE MANAGEMENT
OF HEALTH AND HOSPITALS FUNDS IN THE CITY OF BOSTON

PREFACE

During the past year there have been repeated charges that certain Boston health funds have been misused or have actually disappeared. These claims have been made before the City Council and in court, and they have been reported in the press. A member of the City Council and several individuals have urged the Finance Commission to investigate the charges.

In response to the public charges and the requests that it conduct an enquiry, the Finance Commission has investigated some of the practices and policies respecting the use of health funds, especially with regard to overhead funds provided for in federal grants to the Trustees of Health and Hospitals. The findings of the Commission are set forth in this report.

The Finance Commission has found ample grounds for criticism, but in the interest of avoiding sensationalism it should perhaps be stated at the outset what the Finance Commission did not find:

- (1) The Finance Commission found no evidence of theft or conversion to private use of the funds in question;*

*The Finance Commission has been informed that one former employee has been prosecuted for the embezzlement of approximately \$60,000, but no additional instances of theft or conversion have come to the Commission's attention.

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- (2) The Finance Commission found no indication that the officials responsible for the expenditure of the funds in question acted other than in good faith and in an honest attempt to carry out what they understood to be their duty.

The problems that the Finance Commission did find relate to the failure by the Board of Health and Hospitals, acting in its municipal and in its corporate capacities, to manage effectively a rapidly growing federal health research program, with a resulting controversy between the city and the federal government; failure to observe certain state and municipal requirements, and failure to pay into the city treasury large amounts of federal funds for a period of approximately eight years. In some ways these problems are similar to those that the city experienced previously in its administration of other federal grants, such as Model Cities, CETA and LEAA.

The legal organization of the Department of Health and Hospitals is complex, and the fact that the Board in charge of the Department is by law also made a corporation for certain purposes would inevitably create questions of identity and separation of functions and powers. The unavoidable complexities of the Department, however, have been compounded by certain actions of the Board including its appointment of city officials to multiple offices with, at times, incompatible duties and its willingness to mix its departmental and corporate roles in the handling of funds which were payable to the city.

SUMMARY OF INVESTIGATION

On October 14, 1975, the Finance Commission of the City of Boston voted to conduct an investigation into the accounting by the Trustees of Health and Hospitals of the City of Boston, Inc. ("Trustees Corporation") of public funds under its control, including the question of whether the corporation had made prompt and full payment into the City Treasury of all funds payable to the City.

At its meetings on November 20, 1975, the Finance Commission authorized, in furtherance of the investigation, the issuance of summonses for the attendance of witnesses and the production of documents. The primary purpose of the investigation was to ascertain whether certain funds received by Trustees Corporation from the federal government to cover costs of activities conducted upon city premises should have been paid to the City of Boston. The investigation included a review of the history and administration of Trustees Corporation, and its relationship to the city.

In the course of its investigation the Finance Commission reviewed the laws which created and authorized the activities of Trustees Corporation. The Commission obtained from the United States Department of Health, Education and Welfare ("HEW") copies of correspondence between it and Trustees Corporation. The Commission received and reviewed relevant records and documents held by Trustees Corporation, other government agencies and former employees of the corporation, including management studies and audits of the corporation. The Finance Commission interviewed several persons and also conducted hearings and received sworn testimony from six witnesses.

HISTORY OF TRUSTEES CORPORATION AND ITS RELATIONSHIP TO THE CITY

The organization which is now named Trustees of Health and Hospitals of the City of Boston, Inc. was created by legislation in 1880 (St. 1880, c. 174). Chapter 174 provided that the Trustees of Boston City Hospital were to be made a corporation by the name of "Trustees of the City Hospital of the City of Boston, ...with all the powers and privileges, and subject to all the duties, restrictions, and liabilities in the general laws relating to such corporations." Chapter 174 authorized the corporation to "take and hold real and personal estate to an amount not exceeding one million dollars, which may be given,

granted, bequeathed or devised to it and accepted by the trustees for the benefit of the City Hospital of the city of Boston or any purpose connected herewith." Chapter 174 further provided that money received by the corporation was to be invested by the city treasurer, with the principal and interest payable according to the terms of the gift, under the direction of the corporation. Except for legislation in 1932 increasing from one million to ten million dollars the amount of property that the corporation could hold, its powers remained unchanged until 1965. In that year the Legislature, in response to recommendations made in a report prepared by Robert H. Hamlin, enacted legislation which reorganized Boston's health agencies and created a single Department of Health and Hospitals. Trustees Corporation was renamed "Trustees of Health and Hospitals of the City of Boston, Inc.", its purposes were restated to enable it to accept gifts given "for any purpose connected with the public health or with any hospital owned and operated by the city of Boston", and its powers were enlarged as follows:

"Said corporation shall, in addition, have authority for any purpose aforesaid to contract with, or to accept grants or gifts from governments or governmental agencies, charitable foundations, private corporations or individuals, and to hold and expend the funds received under such contracts, grants or gifts." St. 1965, c. 656, s.6.

Since the 1965 legislative amendment Trustees Corporation has become the recipient of considerable amounts of federal funds used for health research. As of March 31, 1976, Trustees Corporation had 31 active federal grants, amounting to approximately \$5 million dollars.¹ Trustees Corporation does not carry out the grant activity itself; rather, it acts as an administrative agent between HEW or another grantor and the so-called "principal investigator", the person or organization which actually conducts the research activity. In most instances the research takes place upon the premises and uses the facilities of Boston City Hospital.

OVERHEAD FUND DISPUTE

Since 1965 the principal activity of Trustees Corporation has become the administration of grants (primarily federal). In the typical grant administered by Trustees Corporation, it applies for and obtains a grant from the federal government. The research called for by the grant is then carried out by a so-called principal investigator, which is either an individual or an organization. The grant activity normally takes place either at Boston City Hospital or on other city-owned premises. Trustees Corporation receives payment of its costs for administering the grant which are payable according to federal guidelines. They typically amount to a few per cent of the total grant and are intended to cover personnel and administrative expenses of the grantee. Additionally, "overhead expenses" are included in the grant to cover the indirect costs incurred in carrying out the grant activity. They include, for example, the costs incurred by the facility used by a grantee when grant activities take place upon the premises of someone other than the grantee (i.e. the costs of rent, heat, utilities and the use of equipment at the facility). In the case of Trustees Corporation, it received substantial amounts of overhead funds from the federal government because the premises of Boston City Hospital and other city-owned facilities were used by the principal investigators in carrying out the different grant activities.

Not only was Trustees Corporation paid overhead expenses from the federal government, but it also received payments from other grantees, particularly medical schools, when the grant activities they were administering took place in city-owned institutions. Trustees Corporation's balance sheet for its fiscal year ending June 30, 1974, contains an estimated liability to the city for reimbursement of indirect costs of \$1,787,000.

The problem which has arisen with respect to the overhead costs for federal grants is what the appropriate disposition of such payments should have been. Whether Trustees Corporation was obliged to turn over to the city the overhead payments it received from the federal government and from other grantees has been a long-standing issue. In fact, as long ago as April, 1971, an Arthur D. Little, Inc. report on the Department of Health and Hospitals ("DHH") of the City of Boston stated as follows (page 23):

"Research grant funds go either to the DHH Trustees Corporation or to the medical schools. DHH does not benefit from the monies provided for overhead in connection with grants handled through the schools, regardless of the use of DHH resources involved in the grant work."

The Arthur D. Little report then recommends that "DHH should receive an equitable share of grant overhead monies and benefits according to the use made of its resources."

The question of the status of the overhead funds received by Trustees Corporation has been raised in the Price, Waterhouse & Co. audits of the corporation's books for the fiscal years ending June 30, 1971-1974. The audit for the years 1971-1972 contains the following statement:

"Trustees shares in and reports as revenue certain reimbursements for the cost of administration and facilities absorbed by Boston City Hospital. We have been unable to satisfy ourselves that it is appropriate for Trustees to report such reimbursements as revenues."²

Note I to the Audit further states: "Revenues of Trustees relating to the facilities and services provided by the Hospital have significantly exceeded expenditures on behalf of the hospital for the two years ended July 31, 1972."³

The audit for the two years ending June 30, 1974 notes the following:

"Trustees changed the manner in which it accounts for reimbursements it receives from affiliated medical schools for indirect costs incurred and absorbed by Boston City Hospital, the use of facilities at Boston City Hospital, for its projects and expenditures it considers to be made on behalf of the Hospital. Previously these reimbursements were recorded as revenues and the expenditures were recorded as expenses; a charge to operations was not recognized for the facilities used. These changes, which were adopted to reflect Trustees' current understanding of the intention of the granting agencies and affiliated medical schools in making such reimbursements, as well as the intention of Boston City Hospital in providing facilities, result in recording the reimbursements as a liability, the expenditures as a reduction of the liability and recognizing the use of the facilities as an expense.

Although all of the expenditures made by Trustees and charged to the liability to the City of Boston were either for the direct benefit of the Hospital, or were approved by Trustees' Board as being for the indirect benefit of the Hospital, it is uncertain that this definition of chargeable expenditures will be agreed to by the parties involved."⁴

The city billed Trustees Corporation a total of \$2,994,145 for the overhead costs incurred on behalf of Trustees Corporation research projects performed at Boston City Hospital during 1969, 1970 and 1971. However, the city has never made any effort to obtain payment for these years, and it has submitted no bills for any subsequent years. Trustees Corporation's stated liabilities find no counterpart in any record of accounts receivable in the annual reports of the Auditor or of the Department of Health and Hospitals.

On July 24, 1974, Dr. Vernon Patch, then Director of Boston's Drug Program and a professor at Harvard Medical School, wrote Mayor White requesting a meeting "to discuss a multi-million dollar scandal". Dr. Patch testified at the Finance Commission that he met with Mayor White on August 20, 1974, at which time he told the Mayor that for the past several years he had been aware of a problem in the use by Trustees Corporation of overhead funds, and he explained to the Mayor in detail the reasons why he believed that the overhead funds received by Trustees Corporation were payable to the City. According to Dr. Patch, the Mayor assured him that he would have the Deputy Mayor, Robert

Kiley, look into the matter and get in touch with him. Dr. Patch testified that he never heard further about the matter from either the Mayor or from Mr. Kiley.

In early 1975 the HEW Regional Office questioned officials of Trustees Corporation in meetings and by letters regarding the corporation's use of the overhead funds it had received. At first Trustees Corporation claimed that it was billed annually by Boston City Hospital for activities performed at the hospital (Attachment I). Later the General Manager of Trustees Corporation stated in a letter to Dr. Patch, then Director of Boston's Drug Program, that overhead funds received by the corporation were reimbursed to Boston City Hospital (Attachment II). However, a letter from HEW to Trustees Corporation dated August 6, 1975, makes it clear that Trustees Corporation was claiming that it had spent the overhead funds on behalf of Boston City Hospital rather than directly reimbursing it (Attachment III). This letter further states that Trustees Corporation could not give a full accounting of how it had spent the overhead funds without the expenditure of an inordinate amount of effort.*

In July, 1975, HEW suspended the payment of overhead funds on grants to Trustees Corporation, pending the resolution of the question of whether Trustees Corporation had disposed of overhead funds in accordance with applicable federal guidelines.**

*A secondary dispute between Trustees Corporation and HEW is whether the corporation's accountability for overhead funds is limited to the overhead funds the corporation actually received, or is the total overhead expense incurred by grant activities as measured by a formula established by the State Rate Setting Commission. Because HEW uses the latter method of determining overhead liability its totals are considerably larger than those used by Trustees Corporation.

**The issues raised by the federal government are set forth in a letter dated January 6, 1975 from Robert E. Iffert, Jr., Assistant Director, General Accounting Office, to John D. Young, Comptroller of HEW (Attachment IV).

The Trustees themselves have had doubts about the legal relationship of the corporation to the city and whether the corporation had the right to accept payment of the overhead costs of Boston City Hospital. At their meeting on November 1, 1972, the Trustees established a committee which was charged with returning recommendations on various matters, including:

"The legal status of the Corporation, with special reference to the Corporation's capacity to receive payment of BCH's overhead costs.

"Policy matters relating to overhead expenses, charges, and both their collection and disbursement".⁵

Again, on December 3, 1975, the Trustees requested the Acting President, Herbert Gleason, to report to them upon the legal nature of the Corporation.⁶

The minutes of that meeting contain the following information:

"Mr. Gleason said the issue is whether overhead money which is paid to an operating foundation must be paid over to the hospital or whether that money can be used by the operating foundation for hospital purposes. It was his contention that all monies have been used for purposes that the Board would have voted to spend them for."⁷

It was then voted "to request a ruling from the Law Department relative to the legality of the expenditure of certain Trustees overhead monies by the Board and a further clarification of the legal responsibility in this whole area of Trustee funds."⁸

However, whatever private doubts the Trustees have had, their public position is that the corporation's use of the overhead funds was strictly in accordance with its corporate authority to use its property "for any purpose connected with the public health or with any hospital owned and operated by the City of Boston" (St. 1880, c. 174, s. 2, as appearing in St. 1965, c. 656, s. 4). Moreover, in its dispute with HEW, Trustees Corporation has taken the position that its use of overhead funds for health purposes better reflected the intent of the HEW guidelines than if the corporation had paid the fund into the city

treasury. The Acting President of Trustees Corporation, in a letter to HEW dated January 9, 1976, set forth the corporation's position as follows:

"Because it is impossible to pay monies directly to the Department of Health and Hospitals or to the Boston City Hospital which is a part thereof, the Board of Trustees which is by legislative direction (St. 1965, c. 656) identical with the Board of Health and Hospitals, has treated the overhead funds which it has received on research grants as a liability to be expended according to the direction of the Board of Health and Hospitals.

"As you will see from the enclosed financial summaries, a substantial amount of the overhead received by Trustees (\$1,547,000) in the years 1972-1974 has been expended. (\$1,215,000) for the purposes of the Department of Health and Hospitals. So will the remaining balance (\$332,000).

"Trustees believes that it is thus carrying out the purposes which the HEW policies are intended to achieve. If these monies were paid over to the general fund of the City, it is very likely that they would be shared with the Police, Fire and Public Works Department rather than being used to reduce the costs of patient care at Boston City Hospital where these expenses are largely generated."

Despite the suspension by HEW of overhead payments to Trustees Corporation since July 1, 1975, there is evidence that the Acting Executive Director of Health and Hospitals, David Rosenbloom, as recently as last January stated that he would hold up a grant application until a claim was made for full overhead costs. Dr. Vernon Patch, former Director of Boston's Drug Program, testified that he presented an application for a renewal of a grant from the National Institute of Drug Abuse which provided for a waiver of indirect costs because the program would not take place on city-owned property. He further testified that at a meeting with Mr. Rosenbloom on January 19, 1976, also attended by Dr. Patch's assistant, Anthony Raynes (who corroborates Dr. Patch's testimony), Mr. Rosenbloom insisted that he would not approve any grant application unless it made provision for the full on-site indirect cost rate.

Mr. Rosenbloom, although he did not specifically refute Dr. Patch's allegations, testified that any delay upon his part in granting filing approval was occasioned by his desire to review the entire overhead payments question and was not motivated by any intent to make unjustified claims for overhead payments. However, Dr. Patch maintains that neither in his meetings with Mr. Rosenbloom nor in their correspondence was there any suggestion by Mr. Rosenbloom that he was delaying the grant solely for the purpose of reviewing this question. According to Dr. Patch, "At no time was there any question about his [Rosenbloom's] demand that the full on-site indirect cost rate must be applied for." Mr. Rosenbloom contends that he wanted to study the administration of the drug program for himself as he had just been appointed as Acting Executive Director. In fact, when the application was approved by Mr. Rosenbloom in March it did not include a request for the full on-site rate.

It is neither the responsibility nor the intention of the Finance Commission to intervene in a dispute between the federal government and the City of Boston regarding the city's compliance with federal requirements. However, it is a matter of vital interest to the Finance Commission and to the residents of Boston when funds paid for the use of the city's property and facilities are withheld from the city and expended without either appropriation or proper accountability. The overhead funds received by Trustees Corporation were paid by the federal government and by other grantees to compensate the City of Boston for the use of its property and facilities. Although the Trustees have now conceded that these funds constitute a liability they have never turned over any of this money to the city, nor are they fully able to account for how all of these monies have been spent.

The Board of Health and Hospitals has the general care and control of Boston City Hospital and all other public health facilities in the city. Obviously the use of the city's health facilities for substantial amounts of health research activities could only take place with the permission of the Board. If the Board had received these overhead funds in its municipal capacity it would have been obliged under state law to pay them into the city treasury, and they would thereafter have been available for use only after appropriation. See G.L. c. 44, s. 53. However, the Board claims that it received overhead funds in its corporate capacity and used them in accordance with its corporate powers for the benefit of the city.*

EXPENDITURES OF OVERHEAD FUNDS

The Finance Commission has attempted to examine the uses made by Trustees Corporation of the overhead funds to determine to what extent they were in furtherance of the public health or of any hospital owned or operated by the city. Unfortunately, the records of the Corporation prior to 1974 were, in the words of John Christian, the General Manager, in a "shambles", and they have never been reconstructed. For that reason it is impossible for anyone to know all the uses made of the overhead funds. With regard to the period prior to 1974 this Report has already noted the statement in the Price Waterhouse audit for the two years ending June 30, 1972, that "Revenues of Trustees relating to the facilities and services provided by

*To ensure that payments for the use of the city's property did not go to the city treasury, Department officials at various times directed grantees who were using city property to make their checks payable to Trustees Corporation. At least one of the organizations which has used the city's health facilities in conducting grant activities, Harvard Medical School, was aware that it was doing so without any written agreement, and it periodically requested and received written instructions from Department officials directing it to make its payments for the use of the city property to Trustees Corporation (Attachment V).

the hospital have significantly exceeded expenditures on behalf of the hospital..."⁹

The Finance Commission does not contest the claim of Trustees Corporation that it used overhead funds for public health purposes. However, the Commission has found instances in which the use of overhead funds was of questionable value to the furtherance of public health. In fact, a review of the available minutes of the meetings of Trustees Corporation shows that the Trustees appeared to regard the millions of dollars of overhead funds as monies which they could spend without the need to justify their decisions to either the federal or city governments, and without the need, therefore, to keep full and accurate records.

In the discussion and the votes authorizing expenditures of overhead funds which were recorded in the minutes of the November 19, 1975, meeting of Trustees Corporation, the Trustees approved retroactively, from April 1, 1973 through June 30, 1975, the payment of the salaries of the public relations staff of the Department of Health and Hospitals, amounting to more than \$53,000, and they also approved projected expenditures of \$34,000 for the same purpose. The Trustees approved retroactively from July 1, 1973, to June 30, 1975, payment of the salaries of the Commissioner's staff, amounting to more than \$14,000 and they approved a projected expenditure for the Commissioner's office of \$124,000. The minutes of the meeting, with regard to this item, contain the following:

"The average yearly expense over the past two years has been \$100,333.95. A Board appropriation of \$124,223.58 would cover anticipated payrolls to the end of the fiscal period of \$120,223.58 (which includes fringe benefits and a Board authorized 8 percent general cost of living increase), \$2,400 of which is to cover anticipated merit increases for employees, and, lastly, at the Commissioner's request, \$500 for miscellaneous costs incidental to the operation of his office for local travel reimbursements and the like."

The Trustees also approved a projected expenditure of \$15,000 for the Executive Director's office which, according to the minutes, "is used for miscellaneous purposes such as conference attendance and recruitment not budgeted for the City." The minutes further noted that the average annual expense of this item during the previous three years had been \$9,591.25, and that the account had a deficiency of \$3,773.75.

At the same meeting the Trustees also authorized retroactively, from July 1, 1972, through June 30, 1975, the payment of more than \$39,000 to the retired nurses' fund. This money had been used to hire nurses who had previously retired from public employment on pensions. This method of compensation avoided the prohibition in the state retirement law against the rehiring by the city of municipal employees who have retired with pensions.

The payment of the salaries of a public relations staff and assistants to the Commissioner and the establishing of a fund for the use by the Executive Director were items requested for the Department of Health and Hospitals budget which the Mayor did not approve and did not include in his annual budget request, but they were authorized anyway by the Trustees to be paid with overhead funds.* In other instances the salaries of Department of Health and Hospitals personnel were paid by Trustees Corporation before the Department had formally requested that these persons be added to the city's personnel roster. In fact, in the case of Mary Fallon, a Volunteer Worker Administrator, it was explicitly recognized at the time of her employment by Trustees Corporation that the funding of her position might not be approved by the City Council. The June 28, 1972, Minutes of Trustees

*Mr. Rosenbloom has testified that he later decided against hiring additional public relations staff.

Corporation states:

"Dr. Sherman informed the Board that this item was eliminated from the Department's 1972 budget, but was resubmitted in the 1972 supplementary budget request. However, there is no assurance that this item will be approved by the City Council and therefore no guarantee of reimbursement to the Trustees."

On one occasion the Trustees authorized a "grant" of \$2,000 to the Boston Consumers Council "for a study of the costs of certain pharmaceutical products within the City of Boston" (Attachment VI). The Consumers Council explained at the Trustees Corporation meeting on April 23, 1970, that the money was to be used to buy drugs. Apparently the then Commissioner of Health and Hospitals, Dr. Andrew P. Sackett, was not willing that this expenditure be publicized, because the minutes of the meeting record that he requested that this matter be kept confidential.

MANAGEMENT AND RECORD KEEPING DEFICIENCIES

In the past eight years Trustees Corporation has had a record of severe management problems and crises marked by personnel disputes, management turnover, a collapse in record keeping and acute cash flow problems. The Price Waterhouse audits for the years ending 1970-1974 are qualified to the extent that they do not express an opinion on the corporation's financial statements. The audit for the two years ending June 30, 1972, finds "the system of internal accounting controls and the accounting records of the General Fund inadequate for the purpose of providing reliable financial information".¹⁰ The draft audit for the two years ending June 30, 1974, finds that "the system of internal accounting controls and the accounting records were inadequate for the purpose of providing appropriate controls over cash and other transactions during the period ended June 30, 1974".¹¹

A report by a committee of the Trustees, formed to evaluate the corporation, was presented at the Trustees Meeting on October 11, 1972. The report referred to "a dire need of a systematic audit of the Office of the Trustees" and it found a "serious morale problem".¹²

The Finance Commission has heard testimony from two employees and two former employees of the corporation who have confirmed in detail the types of problems referred to in the Price Waterhouse audits. John Christian, the General Manager, testified that the records were in a "shambles" when he took office in January, 1974, and that it was not until February of this year that they had been made current and were in order for the period beginning January 1, 1974. Mr. Christian also stated that the Corporation lacks the capacity and has no plans to reconstruct the records prior to 1974.*

*Mr. Christian showed Finance Commission staff members the corporation's records for the period 1965-1973. They were piled in a corner of a women's rest room, and are obviously unusable.

Linda Mills, former Assistant Chief Accountant, testified that she was concerned throughout her employment about management deficiencies of the Corporation, including failure to obtain timely authorization from the Trustees for expenditures, lack of definition or guidelines regarding the relationship of Trustees Corporation and the Department of Health and Hospitals, failure to maintain accounts receivable and accounts payable on a current basis, and recurring cash flow crises. She felt that her attempts to bring problems to the attention of her superiors were unwelcome and led to a lack of a merit increase which in the normal course she would have received. As she testified:

"It was a case where I felt that there was something illegal going on, that the corporation was not being run properly, and that's the reason I felt he didn't give me a merit increase."

Ralph LePore, former Director of Purchasing and Materials and still an employee of Trustees Corporation, has had a running dispute with Trustees Corporation management for several years. He has criticized the management of the corporation on a variety of grounds, including its disposition of overhead funds. He was also worried about the possibility of his personal legal liability arising from his authorization of purchases on behalf of the corporation if it should be determined that the corporation was acting beyond the scope of its powers. Mr. LePore brought his criticisms of the operation of Trustees Corporation to the attention of various agencies, including the Boston City Council and the Finance Commission.

It appears that since John Christian became General Manager of Trustees Corporation in January, 1974, there has been a noticeable improvement in the management and record keeping of the corporation. Mr. Christian testified that by February of this year he had succeeded in bringing the records up to date from 1974 onwards. He also testified that accounts receivable and payable are now generally on a current basis and that the corporation is able to handle its cash flow needs even though the federal government has suspended

overhead payments. There is still a high rate of employee turnover, but Mr. Christian believes, and the Finance Commission agrees, that this is caused at least in part by reliance upon a personnel system and pay schedule developed for Trustees Corporation by Paul Dorr in 1972. This plan provides for a high percentage of low paying clerical positions, and it is questionable whether the pay scales are competitive for the qualifications required for the positions to be filled.*

USE OF TRUSTEES CORPORATION TO AVOID MUNICIPAL REQUIREMENTS

Mr. Gleason told the Finance Commission that he was the architect of the arrangement whereby Trustees Corporation was used to carry out functions of the Department of Health and Hospitals. He said that after becoming a member of the **board** of Trustees Corporation he urged that the corporation be used to obtain the same kind of flexibility as that of the Trustees of Boston Public Library. Mr. Gleason states:

"Yes to be sure we could be criticized in some respects for doing things to avoid city procedures, but I think it is not a fault. I think we have done so in order to do things, to be able to accomplish things, particularly in a situation where we are frequently in competition with the private sector. We are able to do things as a public agency the Department of Health and Hospitals has not been able to do."

Mr. Gleason believes that without the flexibility of using Trustees Corporation the Department of Health and Hospitals could never have achieved the accomplishments it did in establishing a community health care system.

*Trustees Corporation contends that it has put its affairs in order and has instituted a new accounting system which will prevent a recurrence of past problems. The Finance Commission, while noting the recent improvements, is not in a position to verify the contentions of Trustees Corporation. The most recent audit of the Corporation is for the period ending June 30, 1974, and it is qualified. Management recommendations made by Price, Waterhouse and Company dated December 12, 1975 and an HEW evaluation dated June, 1976, while finding substantial improvements, both find continuing management deficiencies.

The particular advantages he listed were greater speed in personnel appointments and in payments than the city's procedures would allow, and the ability to avoid the Civil Service system.

Whatever advantages were perceived in the use of Trustees Corporation, there is no doubt that the city's personnel, fiscal and administrative requirements were repeatedly avoided. In 1974 the Finance Commission objected to the practice of the Department of Health and Hospitals obtaining personnel services by contracting to obtain them from Trustees Corporation. At the Trustees meeting on June 11, 1974, they approved contracts to provide the Department with certain personnel, but they noted that because of the Finance Commission's objections the positions would in the future be classified in the city's compensation plan.¹³

Whenever Department of Health and Hospitals personnel are paid for from overhead funds there is no need for a contract with the city, and the positions have been filled without the requirement of advertisement in the City Record or notification of the Finance Commission. In this manner the Commissioner's assistants, the Department's public relations staff and various other persons have been employed without regard to Civil Service qualification or to other municipal requirements.

The lack of financial and administrative controls applicable to Trustees Corporation has enabled the Trustees to authorize such matters as (1) retroactive employment, (2) the pledging of the corporation's credit as surety for a \$40,000 bank loan to a health center, and (3) repeated instances of expenditures without advance authorization from the Trustees and without any concern for the source of the funds to be used. As a result, all non-grant funds and non-trust funds received by the corporation from any source and for whatever purpose have been held in one bank account and have been subject to expenditure by Trustees Corporation simply on the basis of availability.

FAILURE TO ACKNOWLEDGE INDEPENDENT IDENTITY OF TRUSTEES CORPORATION AND LACK OF ACCOUNTABILITY

When the Trustees of Boston City Hospital were incorporated in 1880 for the purpose of receiving and spending gifts, the law provided that money received by it was to be invested by the city treasurer and that securities belonging to the corporation were to be placed in the custody of the treasurer (St. 1880, c. 174, s. 2).^{*} The dual role of the board of Trustees of Boston City Hospital under the 1880 law has been stated by Herbert Gleason, the Corporation Counsel, in a brief submitted to the Supreme Judicial Court, as follows:

"[The] board of trustees provided by St. 1880, c. 174, ss. 3,4,5,6 and 7, had two capacities: (1) they were a municipal board having, in behalf of the City of Boston, the general care and control of the City Hospital and of all its branches and of the expenditure of moneys [sic] appropriated therefor; and (2) they constituted a corporation to hold and administer property given, granted, bequeathed or devised to it for the benefit of the City Hospital."^{14**}

Trustees Corporation under the 1880 law was thus no more than a mechanism to effectuate gifts to the City Hospital. The Finance Commission has been informed that prior to 1965 the Trustees of the City Hospital never

^{*}The Corporation appears not to have complied completely with the 1880 law, because it has maintained a savings account since 1888 in the Boston Five Cents Savings Bank, consisting of a gift made at that time and never since used.

^{**}Mr. Gleason, when speaking in his capacity as President of Trustees Corporation, rejects the view that the Board of Trustees had two capacities under the 1880 law. Directly refuting his own view advanced as Corporation Counsel, he states in a letter to the Finance Commission dated June 9, 1976:

"Under St. 1880, c. 174, the Trustees of the Boston City Hospital ran that institution as a corporation separate from the City. Of course, they had no separate meetings to act in their corporate capacity, because that was the only capacity they had."

held separate meetings to act in their corporate capacity or maintained separate minutes of meetings for Trustees Corporation. The 1965 amendment enlarged the powers of Trustees Corporation and enabled it to become an active organization with an increasingly large staff and operating budget. The organization of the corporation, however, was unchanged from the 1880 law, with the Board of Health and Hospitals simply being made a body corporate to carry out the purposes of Trustees Corporation.

Whether the board members were corporation members who would then elect a board of directors (who would not necessarily be board members) or whether the board members had by operation of law the powers of corporate directors was never formally determined. Although the By-Laws of Trustees Corporation provide for the election of directors (Article V (a)), this apparently has never been done. Moreover, all the officers of the corporation have in practice been elected by the Trustees from among their own members. As a result, Trustees Corporation has been governed directly by the Board of Health and Hospitals, acting in their corporate capacity, generally with the Chairman of the Board elected to serve as President of the corporation. For the past several years the acting President of Trustees Corporation has at the same time been Chairman of the Board of Health and Hospitals and the city's Corporation Counsel.

The practice of making the governing body and the principal officers of the board of Health and Hospitals identical to those of Trustees Corporation perhaps explains why the board members have given inadequate recognition to their status and responsibilities when acting in their corporate capacity. The Trustees have used the city's legal services in seeking a definition of its relationship to the city although it is apparent that the interests of the corporation do not necessarily coincide with those of the Department of Health and Hospitals. Moreover, the fact that the acting President of Trustees

Corporation is at the same time the Chairman of the Board of Health and Hospitals and the city's Corporation Counsel constitutes, in the view of the Finance Commission, an incompatibility of office.*

Perhaps because Trustees Corporation has been treated as a mere extension of the Department of Health and Hospitals, the Trustees have not considered it to be subject to municipal and state requirements applicable to such organizations. Partly, this has been the result of a lack of day-to-day knowledge by the Trustees of the functioning of the corporation. For example, in the past Trustees Corporation has maintained two Cape Cod bank accounts, one of which was only closed on May 25, 1976, after the Finance Commission brought the fact of its existence to the attention of the acting President of the corporation. The General Manager testified that it was his understanding that this account had been opened because a Trustee at the time had been connected with the bank. If the General Manager's understanding is correct, the opening of the bank account may have been a violation of G.L. c. 268A, the conflict of interest law.

Although Trustees Corporation is not accountable to the city, it is, as a charitable corporation, obliged to file an annual report with the Attorney General's Division of Public Charities (G.L. c. 12, s. 8F), and it is subject to the requirements of G.L. c. 180, perhaps including an annual filing requirement with the State Secretary (G.L. c. 180, s. 26A). However, Trustees Corporation had never filed any report with the Division of Public Charities until the Finance Commission called the failure to file to the attention of the Division.

*The city's Ordinances (c. 17, s. 1) provide that the Corporation Counsel "shall, on application, advise any officer or employee of the city on any question of law connected with the discharge of his official duties." The Corporation Counsel is thus in the position of rendering himself advice in his capacity as Chairman of the Board of Health and Hospitals. See Russell v. County of Worcester, 323 Mass. 717 (1949).

Trustees Corporation has enacted by-laws in accordance with G.L. c. 180, but they have been largely ignored. For example, Trustees failed for a period of almost six years to hold an annual meeting or to elect officers. The result is that the acting President of Trustees Corporation, Herbert Gleason, holds office because he was elected Vice President on October 1, 1971, and became acting President when the President resigned.

The Finance Commission has been informed that Trustees Corporation, at a meeting held in May of this year, formed a committee to evaluate its status and relationship to the city. The Finance Commission hopes that Trustees Corporation makes use of competent independent assistance in this undertaking.

CONCLUSIONS

If Trustees Corporation is considered to be a separate, non-governmental unit, then it ought not to be accepting funds on behalf of the City in payment for the overhead costs on city buildings. As a non-government agency, it is empowered by the statute to accept grants, gifts, and contracts for Boston public health and hospitals, but the Finance Commission believes that this language does not in and of itself imply the right to incur liabilities on behalf of a city-owned building without the intent to reimburse the city treasury for these costs. Nor does the Board of Health and Hospitals have the right to incur such liabilities without approval for payment in its city-approved budget or by a city-approved appropriation. If Trustees Corporation were to be considered a mere extension of the Board of Health and Hospitals, then it would also have to turn in to the City treasury any such income it received as required by M.G.L. ch. 44, sections 53 and 53A.

Although the Municipal bureaucracy is often cumbersome and exasperating, it fulfills well the function of holding individuals and departments accountable for every dollar of their City funds. No City department head, acting under municipal regulations, could ever have been so lax as to allow his department's books to reach the state of "shambles" found in the Trustees Corporation prior to 1974. He would have had to account annually for every dollar spent and would have had to make requests during the year to change even one dollar from one line item account to another. If the department head could not do so, he could have been held personally accountable and could either have been removed from office by the Mayor or have had his department's budget held up by the City Council until proper remedial action were taken.

There are no such built-in safeguards when funds are administered entirely by the Trustees without any oversight by elected city officials.

Nor does Trustees have any built-in oversight and accountability mechanism (such as the private corporation where the management must report to an independent board of directors and can be subject to removal by the stockholders.)

Where federal funds are received as a grant, Trustees must account to the federal agency as to how it spends the funds. However, when Trustees receives funds for the use of City property it is the City, not the federal government, to whom it ought to be accountable. The federal government cannot dictate who shall receive money for the use of City-owned buildings. Therefore, HEW's expected determination as to whether or not the Corporation has been in violation of federal rules by not turning the overhead money over to the City treasury should have no effect on the City's responsibility to collect these monies.

The Finance Commission has been assured by Mr. Rosenbloom that the bookkeeping system is now functioning properly. He contends that there is now full "accountability" by Trustees Corporation based upon these books as well as on the facts that the members of the Board of Health and Hospitals and the Trustees Corporation are "public officials", their meetings are public, and they are subject to being audited by the appropriate agencies.

The type of "accountability" to which the Finance Commission is referring, however, is a review or oversight mechanism for decisions made by individuals who are in a position to disburse funds on behalf of the City of Boston. To whom must they justify their judgments as to how funds are spent? Every city department head must justify the programs and expenditures of his department to elected officials accountable to the taxpayers of the City of Boston. This includes departments such as the Police Department even when operating on a federal grant.

According to Mr. Rosenbloom there are plans being considered to appoint him in the near future as President of the Trustees Corporation, a member of the Board of Health and Hospitals, Commissioner of the Department of Health and Hospitals and Executive Director of the Department of Health and Hospitals. Thus, to a great extent, Mr. Rosenbloom will be accountable to himself as an overseer of his own management policies and practices. The Board members are appointed by the Mayor, but because the terms of the individual Board members are not each coterminous with the term of the Mayor, the voters of Boston will not have an opportunity to accept or reject this management group in any election.

While it appears that Mr. Rosenbloom has both the ability and the desire to resolve past management problems, an institution must have its controls and safeguards built into its system and cannot be dependent upon individual personalities who will come and go with time. Given the lack of an institutionalized oversight procedure to review the judgments of individuals disbursing these overhead funds, the Finance Commission believes that where the present laws are subject to the interpretation that such funds should go to the City Treasury, this should be done and municipal regulations should be fulfilled unless and until an adequate internal review mechanism is added to the present system and new legislation is approved to articulate the power of the relevant bodies to administer such funds under those new procedures.

RECOMMENDATIONS

(1) Trustees should not pay the salaries of Department of Health and Hospitals personnel except in accordance with the terms of a gift or grant. Nor should the Department take any other action which is designed to permit it to avoid budgetary examination.

(2) The Department of Health and Hospitals should accept responsibility for the future employment of Department personnel, and the financing of health programs, which presently are being paid for by Trustees Corporation from overhead funds.

(3) Trustees Corporation should end at once its practice of permitting the Commissioner of Health and Hospitals to spend the corporation's funds in his own discretion.

(4) Trustees Corporation votes which require the expenditure of funds should always state the source of the funds, and this information should appear in the minutes of the meetings.

(5) The Board of Health and Hospitals should not have as its Chairman or as a member the city's Corporation Counsel.

(6) Trustees Corporation should retain the services of independent legal counsel to advise it upon all matters relating to its legal organization and authority, its relationship to the city, its compliance with all applicable provisions of law and its accountability to other governmental bodies.*

(7) Trustees Corporation should obtain an independent legal opinion, including, if necessary, a judicial declaratory judgment, as to whether the board members are invested with the powers of both corporation members and directors or only those of corporation members. If they are invested with only the latter powers, they should create a board of directors.

(8) Trustees Corporation should pay to the city all overhead funds it receives from the federal government or other grantor for the use of city property and facilities.

*The staff attorney presently on Trustees Corporation's payroll should either be assigned entirely to the affairs of the corporation or he should be transferred to the payroll of the Department of Health and Hospitals and represent only the interests of that Department.

(9) Trustees Corporation and the city should notify all grantee institutions which use city property and facilities that payments for its use are to be made to the city and not to Trustees Corporation.

(10) Since Mr. Rosenbloom and Mr. Gleason, speaking for the Board and for Trustees, contend that subjecting the expenditure of these overhead funds to municipal controls would seriously hinder their ability to provide good health care programs, the Finance Commission suggests that the Board seek an amendment to its own enabling statute which would (1) specifically set out the ability of the Trustees to accept such funds on behalf of the City and (2) specifically set out an internal oversight mechanism for dealing with the Trustees use of these funds (the most obvious one would be for the Board members to be different people from the corporation members and to have the ability to vote on the Trustees programs). The Finance Commission would offer its aid to the Board in seeking such legislation.

Respectfully submitted,

FOR THE FINANCE COMMISSION

Andrea Wasserman Gargiulo, Chairwoman

Frederick R.H. Witherby, Esq.

Percy C. Wilson

Barbara Cheney

FOOTNOTES*

- 1 "Survey of the Accounting and Internal Control Systems of the Trustees of Health and Hospitals of the City of Boston, Inc.", Region I, Dept. of Health, Education and Welfare, Audit Control No. 01-61454, June 1976, page 1.
- 2 Trustees of Health and Hospitals of the City of Boston, Inc., Financial Statements; Price, Waterhouse & Co. Audit, June 30, 1972, pages 1-2.
- 3 Ibid., page 8.
- 4 Trustees of Health and Hospitals of the City of Boston, Inc., Financial Statements; Price, Waterhouse & Co. Audit, June 30, 1974, Note 3.
- 5 Minutes, Trustees of Health and Hospitals of the City of Boston, Inc., Meeting of November 1, 1972, Item 3 (Added).
- 6 Minutes; Trustees of Health and Hospitals of the City of Boston, Inc., Meeting of December 3, 1975.
- 7 Ibid.
- 8 Ibid.
- 9 Op. Cit., Note 3 .
- 10 Op. Cit., Note 2 , page 1.
- 11 Op. Cit., Note 4 , page 1.
- 12 Minutes, Trustees of Health and Hospitals of the City of Boston, Inc., Meeting of October 11, 1972.
- 13 Minutes, Trustees of Health and Hospitals of the City of Boston, Inc., Meeting of June 11, 1974.
- 14 Brief for the Boston City Hospital, John R. McCarthy vs. the Boston City Hospital et al., 358 Mass. 639 (1971).

*Copies of documents referred to are available at the Finance Commission.

ATTACHMENT • I



Trustees of Health and Hospitals of the City of Boston, Inc.

P. O. BOX 18186 • BOSTON, MASSACHUSETTS, 02118 • TEL. 424 - 5905

March 13, 1975

Mr. Walter Boland
Director, Cost Review and
Assistance Division
Department of Health, Education,
and Welfare, Region I
John F. Kennedy Federal Building
Government Center
Boston, Massachusetts 02203

Dear Mr. Boland:

It was a pleasure talking to you on Wednesday, although the circumstances were unpleasant. As I explained on the phone, the Trustees of Health and Hospitals of the City of Boston, Inc., is a non-profit corporation established under Chapter 656 and is owned by the Department of Health and Hospitals of the City of Boston.

The overhead monies that were collected by Trustees were based on the negotiation rate with HEW. This money is for reimbursement of actual expenses incurred by the various research awards conducted at Boston City Hospital. The hospital bills us for these expenses annually.

We are looking forward to our meeting this Wednesday, March 19, at 1:00 p.m. Hopefully, we can resolve the problems at that meeting or at least answer most of your questions. Until then, I remain.

Very truly yours,

TRUSTEES OF HEALTH AND HOSPITALS
OF THE CITY OF BOSTON, INC.

John L. Christian
General Manager

JLC:cjq



Trustees of Health and Hospitals of the City of Boston, Inc.

P. O. BOX 18186 • BOSTON, MASSACHUSETTS, 02118 • TEL. 424 - 5905

July 11, 1975

Vernon D. Patch, M.D., Director
Boston Polydrug Unit
Mattapan Chronic Disease Hospital
249 River Street
Mattapan, MA 02126

Dear Dr. Patch,

I have reviewed your request for Trustees, Inc. to commit to pay the personnel cost for operation of the Polydrug Unit, Ward A-2, at Mattapan for the period July 20, 1975 through August 12, 1975.

Trustees, Inc., as you know, is a grantee institution which administers grants and contracts for a fee which is presently 3.43% of direct costs. We also collect for Boston City Hospital an average rate of 45.63% of salaries and wages. This latter figure is reimbursed to the hospital, the former figure pays for Trustees, Inc. operations.

Since there are no unallocated funds handles by Trustees, Inc. I must regretfully deny your request to pay the aforementioned salaries. If the Department of Health and Hospitals would like to pay these salaries on a contract with Trustees, Inc. we could arrange to accommodate them. Also, the Board of Directors of Health and Hospitals may be able to identify a source of funds to accommodate your request. If they are able to do so and are so inclined, we will provide any service necessary from this office.

I regret not being able to comply with your request. If there are other ways we may be of service, please contact me.

Very truly yours,

TRUSTEES OF HEALTH AND HOSPITALS
OF THE CITY OF BOSTON, INC.

John L. Christian
General Manager

cc: W. Kountze
J. Norton

JLC:jm

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
REGION IJOHN F. KENNEDY FEDERAL BUILDING
GOVERNMENT CENTER
BOSTON, MASSACHUSETTS 02203OFFICE OF
THE REGIONAL DIRECTOR

August 6, 1975

Mr. John L. Christian
General Manager
Trustees of Health and Hospitals
of the City of Boston, Inc.
P.O. Box 18186
Boston, MA 02118

Dear Mr. Christian:

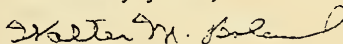
This letter confirms the status of the items discussed on July 16, 1975 with Mr. Joseph Flaherty of your organization.

We requested this meeting for the purpose of obtaining data to support your position that the Trustees of Health and Hospitals of the City of Boston, Inc. (Trustees) paid expenses on behalf of the Boston City Hospital (BCH). It is our understanding that these payments were made in lieu of directly reimbursing BCH for indirect costs incurred at BCH on grants and contracts awarded to the Trustees and other affiliated institutions. The data submitted by Mr. Flaherty attempts to satisfy less than one million dollars of a BCH claim that exceeds five million dollars. Mr. Flaherty believes that an inordinate amount of effort would be required to assemble more support data. Clearly this is an unsatisfactory situation.

We then discussed other possible solutions to the problem. If the Trustees of Health and Hospitals of the City of Boston, Inc. is not a separate and distinct legal entity from the City of Boston you may want to prove that no legal liability exists between the Trustees and BCH on matters regarding indirect costs. We understand that you would like to explore this further. If you would obtain an interpretation from your attorneys and submit it to our office for review, we shall be glad to have our attorneys review the data.

Please furnish us with this additional data by August 31, 1975. If you have any questions regarding this matter please do not hesitate to call me or Al Beaupre at 223-5181.

Sincerely yours,

WALTER M. BOLAND
Director, Cost Review and
Assistance Division

UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

AN POWER AND WELFARE
DIVISION

JAN 0 6 1976

The Honorable John D. Young
Assistant Secretary, Comptroller
Department of Health, Education, and Welfare

Dear Mr. Young:

We have surveyed indirect cost reimbursements to Trustees of Health and Hospitals of the City of Boston, Inc. (Trustees)--an affiliate of Boston City Hospital (BCH)--under grants awarded to Trustees and medical schools affiliated with BCH. As part of our survey, we also reviewed indirect costs related to a Drug Abuse Services Project grant awarded to Trustees by HEW's National Institute of Mental Health (NIMH).

Our survey shows there is a need for HEW to resolve certain questions concerning Trustees' rights to receive and retain funds under existing HEW guidelines. Trustees received and retained indirect cost reimbursements on behalf of BCH (1) from HEW contrary to HEW guidelines which required that such reimbursements be paid to BCH and (2) from medical schools under HEW grants for overhead generated by school personnel working at BCH. Although HEW guidelines do not specifically preclude Trustees from receiving and retaining reimbursements from the medical schools, a question of appropriateness arises because the circumstances closely parallel those mentioned in (1) above.

Our survey also showed that Trustees may have been allowed excess indirect costs for fiscal years 1973 through 1975 on the Drug Abuse Services Project grant because it incorrectly applied an indirect cost rate. Further, Trustees accounting and internal control system may not be adequate to protect the interests of the Federal Government.

BACKGROUND

Trustees is a non-profit corporation established in 1965 pursuant to Chapter 174 of the Acts of 1880 of the Commonwealth of Massachusetts. It is authorized to receive and administer contracts and grants from governmental agencies and others for research, training and service and to administer various trust fund activities relating to the health needs of the City's citizens. Trustees' operations are administered by a Board of Trustees which also administers the affairs of the Department of Health and Hospitals of the City of Boston, of which BCH is a component.

A Trustees official advised us in December 1975 that Trustees employed about 850 persons, all but about 30 of whom were engaged directly in research and service programs. Projects awarded to Trustees are carried out principally at the facilities of BCH.

Trustees charged (1) HEW for indirect costs of the projects it performed at BCH and (2) medical schools affiliated with BCH for indirect costs of the projects the schools performed at BCH. Indirect cost reimbursements were placed in Trustees general fund and disbursed for various purposes including those benefiting BCH. Reimbursements for indirect costs incurred by BCH were treated as revenue by Trustees and not paid to BCH.

QUESTIONABLE INDIRECT COST REIMBURSEMENTS TO TRUSTEES

HEW reimbursed Trustees for indirect costs--amounts which we could not readily determine--on HEW grants contrary to HEW's Grants Administration Manual. The Manual provides that indirect costs incurred by affiliated organizations (such as BCH) in support of grantee institutions (such as Trustees) are allowable for reimbursement only if (1) the grantee institution is charged for and pays for the services provided and related costs incurred by the affiliated institution, or (2) the grantee and the affiliated institution submit joint applications and the awards are made jointly to them.

We found that neither of the above conditions were met. BCH advised Trustees of its indirect costs in memorandum form and did not specifically charge Trustees for them. Trustees, in turn, did not establish a liability on its books for such costs nor pay them. Trustees submitted its own applications and the grants were awarded to Trustees alone.

HEW also paid indirect costs on HEW grants to various medical schools for overhead generated by school personnel working at BCH. The schools paid the following sums to Trustees as indirect cost reimbursements.

<u>Fiscal Year</u>	<u>Amount</u>
1971	\$489,000
1972	794,000
1973	not readily obtainable
1974 (9 mos.)	369,461

An HEW regional financial management representative told us he believed most of the reimbursements were for HEW grants. These payments were treated by Trustees as revenue and deposited in its general fund. Although HEW guidelines do not specifically preclude Trustees from receiving and retaining these reimbursements, a question of appropriateness arises because the circumstances closely parallel those involved in the reimbursements by HEW to Trustees for BCH costs.

Trustees General Manager said indirect costs were not reimbursed to BCH immediately because its indirect costs were funded in the City's annual budget. He said indirect cost funds from the grants were held by Trustees until the Department of Health and Hospitals of the City of Boston directed Trustees to spend them for various purposes, some of which benefited BCH.

Trustees' officials told us at the time of our survey that the accounting system could not readily provide us with financial data on indirect costs collected on behalf of BCH and expenditures made by Trustees on behalf of BCH before fiscal year 1975. A system was being installed, however, that the officials said would be able to accumulate such financial data for current projects. Further, because an independent audit of Trustees' financial statements was in progress, the officials said they could not compile reimbursement data for us. Consequently, we do not know (1) the amount of indirect costs collected on behalf of BCH and (2) the amount paid for the benefit of BCH.

HEW regional representatives advised us that, after our bringing this matter to their attention, they held several meetings with Trustees' officials to attempt to resolve the problems related to indirect costs including having Trustees provide documentation on the expenses it paid on behalf of BCH. Trustees provided some of this documentation and indicated an inordinate amount of effort would be required to assemble more support data. On August 6, 1975, an HEW regional representative advised Trustees that the information was not satisfactory and requested additional documentation. There has been subsequent correspondence between HEW and Trustees attempting to reach a mutually satisfactory solution. HEW has requested that Trustees resolve the matter by January 10, 1976.

INCORRECT APPLICATION OF INDIRECT COST RATE

Trustees may have been allowed excess indirect costs for fiscal years 1973 through 1975 on its Drug Abuse Services Project grant. Trustees claimed costs based on a provisional indirect cost rate of 45.63 percent for Trustees administered research at BCH (the on-site rate) when most of the effort under this grant was performed at locations other than BCH.

In June 1972, Trustees received the first grant covering the period July 1, 1972, through June 30, 1973, under an 8-year Drug Abuse Services Project. The grant, now administered by the National Institute on Drug Abuse (NIDA), was to expand the drug treatment program in the City of Boston by adding three facilities to the program--drug clinics at Brighton and Mattapan, Massachusetts, and a halfway house. In the second and third year of the project three additional off-site locations were added to the project.

The indirect costs claimed for fiscal year 1973--\$114,638--were based on the on-site indirect cost rate--45.63 percent--applied to the direct salaries and wages of grant personnel used as the base for computing indirect costs--\$251,234. We determined that about \$172,000, or 68 percent, of the direct salaries and wages pertained to personnel located at the Brighton and Mattapan clinics. The halfway house was not operational in fiscal year 1973.

In fiscal year 1974 Trustees claimed \$78,803 in indirect costs. At the conclusion of our survey, Trustees had not yet submitted its expenditure report to NIDA for fiscal year 1975; however, in its budget for that year, Trustees estimated its indirect costs would be \$162,760. We did not determine the salaries and wages of grant personnel at off-site locations for these years.

An HEW regional financial management representative advised us the allowable indirect costs for the off-site locations would be considerably less than those claimed by Trustees. He said the rate for some of the off-site locations should be 5 or 6 percent instead of 45.63 percent. He said the amount of the allowable indirect costs would be determined when the rates are finalized for these years.

The regional representative was not aware Trustees had grants which were performed partially off-site until we brought the matter to his attention. He advised that (1) the grantee (Trustees) should have either requested a composite rate reflecting the on-site and off-site activities or a special off-site rate, and (2) the grantor (NIMH and NIDA) should have notified his office that the project was being conducted at locations other than BCH so actions could have been initiated to have Trustees submit a revised indirect cost proposal reflecting these off-site locations. He said neither Trustees nor NIMH nor NIDA notified his office of these circumstances.

Subsequently, the Region I Director of the Cost Review and Assistance Division notified NIDA officials in July 1975 that a significant portion of the grant was being performed at off-site locations and asked them to take corrective action. NIDA, in turn, notified Trustees that the on-site rate claimed was not proper and that Trustees should obtain a corrected indirect cost rate reflecting the off-site activities from the HEW Assistant Regional Director for Financial Management. As of November 1975, Trustees had not obtained a corrected rate.

QUESTIONABLE ADEQUACY OF TRUSTEES ACCOUNTING AND INTERNAL CONTROL SYSTEM

On March 30, 1973, Trustees' independent auditors reported on their examination of Trustees' financial statements for the 2-year period July 1, 1970, through June 30, 1972. They stated that:

- The condition of the accounting records was such that they could not successfully execute certain auditing tests and procedures necessary to comply with generally accepted auditing standards, and
- The system of internal accounting controls and the accounting records of the general fund were inadequate for providing reliable financial information.

Trustees' independent auditors had not completed their examination of Trustees' financial statements for the period July 1, 1972, through June 30, 1974, at the close of our survey. A Trustees official advised us in December 1975 that the report had not yet been released by the auditors and he did not know when it would be released.

On February 5, 1975, a report by another independent audit firm on expenditure of HEW funds by Trustees on a Family Planning Project for the year ended August 31, 1974, stated that Trustees "... did not maintain an accounting system that adequately summarized expenditures applicable to the HEW program".

During our survey, the condition of Trustees' accounting records was such that we could not readily determine the value of grants awarded annually or the amount of indirect expense reimbursements received for most grants or in total. With respect to the need to improve internal control of funds, the Suffolk County, Massachusetts, District Attorney recently obtained indictments charging a former Trustees payroll supervisor with larceny of \$62,497 by uttering 188 payroll checks during the period January 10, 1974, to March 1, 1975.

Trustees' officials stated that a new accounting and internal control system being installed will provide accurate information. Trustees has been operating under the new system since March 1975.

RECOMMENDATIONS

We recommend that you, together with the Assistant Secretary for Health and the Regional Director, Region I:

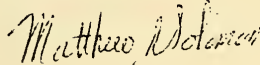
- Determine the amount of indirect cost reimbursements which were paid to Trustees contrary to HEW's Grants Administration Manual and whether any monies might be due either BCH or the Federal Government.
- Ensure Trustees conforms to HEW's Grants Administration Manual in the future by either (1) being charged for and paying for indirect costs generated by services provided by BCH or (2) submitting a joint grant application with BCH and being awarded a grant jointly.

- Determine the appropriateness of indirect cost reimbursements which were paid by the medical schools to Trustees instead of BCH, the provider of the services. If the circumstances are considered inappropriate, guidelines should be modified accordingly.
- Determine the proper indirect cost rate that should have been used on the Drug Abuse Services Project and recover any excess indirect costs allowed Trustees for fiscal years 1973 through 1975. If Trustees has other grants where grant effort is performed off-site yet Trustees is claiming the on-site rate, the proper rate should be determined and any excess indirect costs allowed recovered.
- Determine whether Trustees new accounting and internal control systems are adequate to protect the interests of the Federal Government and whether costs charged to grants are reasonable, allocable and necessary to achieve grant objectives.

- - - -

We would appreciate your comments and advice on actions taken or planned on these matters. Copies of this report are also being furnished to the Assistant Secretary for Health and the Regional Director, Region I.

Sincerely yours,



Robert E. Iffert, Jr.
Assistant Director

HARVARD UNIVERSITY

Office of the
Financial Vice President

450 HOLYOKE CENTER
CAMBRIDGE, MASSACHUSETTS 02138

617-495-5501

April 22, 1976

Mr. Enzo S. Bozzonetti
Division of Financial Management Standards
& Procedures
Office of the Assistant Secretary, Comptroller
Department of Health, Education and Welfare
Washington, D. C. 20201

Dear Mr. Bozzonetti:

This is in response to Mr. Kirschenmann's letter of April 1, 1976 concerning the GAO survey report of Trustees of Health and Hospitals of the City of Boston, Inc., and our subsequent telephone conversation thereto.

To the best of my knowledge there is no written agreement between the University and either the Trustees or any organizational unit of the City of Boston that provides for the use of City facilities and services (such as Boston City Hospital) by University personnel performing work under HEW grants and contracts. However, I am enclosing copies of four (4) pieces of correspondence between representatives of the Harvard Medical School and the Trustees which directed the University to pay to the Trustees the overhead collected by the University on behalf of Boston City Hospital under the Harvard-Hospital composite rate. This arrangement was effective beginning January 1, 1965 and has continued to the present time.

As discussed, enclosed is a copy of our detailed analysis of all HEW grants and contracts under Harvard administration that were performed at Boston City Hospital during the fiscal year ended June 30, 1974. The base on which the overhead was determined would be total direct expenses (column 10) less equipment (column 7). Except as noted, all of the projects were located exclusively at the Boston City Hospital. Therefore, they would be entitled to the full proportionate share of the total overhead collected. For fiscal 1973-74, the negotiated fixed rate was 58% of which 32% accrued to the hospital pool and 26% to the University.

Please advise whether this schedule will be sufficient in order for you to respond to the GAO.

Sincerely yours,

David G. Barlow
Director of Fiscal Operations

DGB/cs
Enclosures

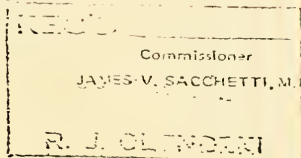
DEPARTMENT OF HEALTH AND HOSPITALS

TRUSTEES

DAVID S. NELSON, Chairman
 MRS. RUTH BATSON
 FREDERICK J. DAVIS
 REGINALD A. EAVES
 VARY W. FIDLER, Secretary
 JOHN T. GAFFNEY
 HERBERT P. GLEASON
 MRS. NANCY HUNTINGTON
 GEORGE MONDZ



813 HARRISON AVENUE
 BOSTON, MASSACHUSETTS 02118



October 13, 1972

Mr. Richard J. Olendzki
 Associate Dean of Financial Affairs
 Harvard Medical School
 25 Shattuck Street
 Boston, Massachusetts 02115

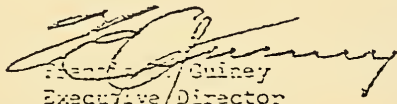
Dear Mr. Olendzki:

In reply to your letter of October 12, please accept this as my approval to pay \$701,678.00 to the Trustees of Health and Hospitals of the City of Boston, Inc., 909 Massachusetts Avenue, Boston, Mass., 02117 as reimbursement for indirect costs on Harvard administered grants.

Because of recent changes in administrative personnel both here at City Hospital and in the Trustees organization, we would appreciate the opportunity to have some of our new people briefed on the Harvard-Hospital composite rate formulas and procedures used in arriving at these annual reimbursements.

I understand that your office has already been kind enough to offer such a briefing to Mr. Katzman, our Comptroller. There are several others we would like to plug in as well and I have asked Mr. Lawrence Chvany our Director of Planning, Research and Evaluation to get in touch with you and to arrange such a meeting at a time which is mutually convenient.

Sincerely,


 Lawrence Chvany
 Executive Director
 Dept. of Health and Hospitals

HARVARD MEDICAL SCHOOL

25 SHATTUCK STREET

BOSTON, MASSACHUSETTS 02115

RES 147-4-3300

OFFICE OF THE DEAN

October 12, 1972

Mr. Frank Guiney
Executive Director
Boston City Hospital
818 Harrison Ave.
Boston, Massachusetts

Dear Mr. Guiney:

. It has been a practice in the past that the distributions of indirect cost reimbursement applicable to Harvard administered grants located in the Boston City Hospital were forwarded to the "Trustees of Health and Hospitals of the City of Boston, Inc.". We are now ready to make a further distribution of indirect cost reimbursement in the amount of \$701,678.00.

As you may know, the above reimbursement was computed under the Harvard-Hospital composite rate which we have been operating under for the past six years for the purpose of distributing indirect costs to the various hospitals on grants and contracts administered by Harvard but housed in the hospitals. The Harvard-Hospital composite rate was developed in conjunction with the Committee of Hospital Controllers and the government cognizant audit agency and was administered within the framework of the activities of this Committee. The Boston City Hospital representatives have participated actively in the work of this Committee.

The method of computation and distribution was explicitly approved by a former Deputy Commissioner, Mr. William R. Hamilton, Jr. (see enclosure).

Before we make the reimbursement of \$701,678.00, I would appreciate your approval in writing of the continuation of the past practice of making the check payable to the "Trustees of Health and Hospitals of the City of Boston, Inc.".

Should you want any additional information regarding the Harvard-Hospital composite rate and the distribution of indirect cost reimbursement, please do not hesitate to call.

Sincerely,



Richard J. Glendzki
Associate Dean of Financial Affairs

CITY OF BOSTON
DEPARTMENT OF HEALTH AND HOSPITALS

3 HARRISON AVENUE
BOSTON, MASSACHUSETTS 02113

Tel. No. 424-5378

December 26, 1967

RECEIVED

DEC 27 1967

Mr. Richard J. Olendzki
Assistant Dean for Financial Affairs
Harvard Medical School
25 Shattuck Street
Boston, Massachusetts 02115

Business Office H. M. S.

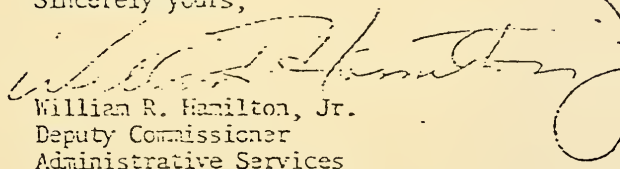
Dear Dean Olendzki:

After a careful review of the method of distribution of overhead credits arrived at by the Harvard Medical School in conjunction with its affiliated hospitals and specifically after review of the distribution statement to Boston City Hospital presented by you under date of December 6, 1967, please be advised that the Trustees will accept your payment in the amount of \$170,762.39, representing gross overhead due Boston City Hospital for the period January 1, 1965 through June 30, 1967 less credit advances already received in the amount of \$92,643.12.

A check should be made payable to the Board of Trustees, Department of Health and Hospitals, City of Boston.

As regards further distribution of overhead grants, it is the wish of the Trustees that an annual payment be forwarded regularly as soon as practicable after June 30, 1968, and annually thereafter until further notice. It is anticipated that the next payment will be made for the period July 1, 1967 to June 30, 1968 shortly after the end of that period.

Sincerely yours,


William R. Hamilton, Jr.
Deputy Commissioner
Administrative Services

cc: Andrew P. Sackett, M.D.
James P. Harold

LRH:aw

April 23, 1970

Discussion: None.

Motion to approve by Mr. Gleason; seconded by Miss Fidler.

Vote: For 6; Against 0; Absent 2.

APPROVED.

- Item 3. Recommendation for expenditure of \$1,000.00 for the modification of second floor of the Old Shawmut Bank Building.

Upon recommendation of Dr. James V. Sacchetti, Deputy Commissioner, Evaluation, Research and Planning, this corporation authorize the expenditure of \$1,000.00 for the modification of the second floor of the Old Shawmut Bank Building, now under lease to the Trustees of Health and Hospitals of the City of Boston, Inc., for the purpose of providing suitable space for research in electrocardiography. Dr. Lawrence B. Ellis who is conducting the research will pay rent in the amount of \$100.00 a month. Arrangements for the modification will be made by Mr. Howard Buckley, Deputy Commissioner, Health and Hospitals Facilities.

Discussion: None.

Motion to approve by Miss. Fidler; seconded by Mr. Davis.

Vote: For 6; Against 0; Absent 2.

APPROVED.

- Item 4. Recommendation for advance of \$5,000.00 to the Association of Urban Priests, Inc., re Pine Street Inn.

Upon recommendation of Dr. Jonathan E. Fine, Deputy Commissioner, Community Health Services, this corporation advance the sum of \$5,000.00 to the Association of Urban Priests, Inc., for the purposes of providing the services of one (1) full time counselor at the Intoxication Unit of the Pine Street Inn, located at 8 Pine St. Boston, Mass., pending the processing of a contract with the City of Boston in the said amount. The association of Urban Priests will tender a note in the amount of \$5,000.00 upon receipt of this advance.

Discussion: It was explained by Dr. Fine that the need of the Inn for funds is immediate. The loan will be repaid when the contract with the inn in the amount is executed.

Motion to approve by Mr. Gleason; seconded by Mr. Davis.

Vote: For 6; Against 0; Absent 2.

APPROVED.

- Item 5. Recommendation of grant to the Boston Consumers Council in amount of \$2,000.00

✓ Upon recommendation of Dr. Jonathan E. Fine, Deputy Commissioner, Community Health Services, this corporation authorize a grant to the Boston Consumers Council in amount of \$2,000.00 for a study of the costs of certain pharmaceutical products within the City of Boston.

Discussion: Mr. Al Judd from Consumers Council described the proposed study re. pharmaceutical products. The 2,000.00 amount will be used to purchase drugs in accordance with the study of the costs of certain

pharmaceutical products. The \$2,000.00 amount will be used to purchase drugs in accordance with the study designed.

Dr. Sackett requested this matter be kept confidential.

Motion to approve by Mr. Gleason; seconded by Miss Fidler.

Vote: For 6; Against 0; Absent 2.

APPROVED.

Item 6. Recommendation for contract between Department of Health and Hospitals and Action for Boston Community Development.

Recommendation of Dr. Jonathan E. Fine, Deputy Commissioner, Community Health Services, that this Board approve a contract between the Trustees of Health and Hospitals of the City of Boston, Inc., and the Action for Boston Community Development under which the Department will organize Family planning services to be paid by the A.B.C.D. from a grant provided by the Department of Health, Education and Welfare.

Discussion: Mrs. Edna Smith of the Family Planning Committee and Dr. Joseph Kerrins described the proposed program. A copy of the project is attached.

Motion to approve by Mr. Davis; seconded by Mr. Gleason.

Vote: For 6; Against 0; Absent 2.

APPROVED.

Mary W. Fidler
Mary W. Fidler, Secretary

